IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.750 OF 1999

Ramdas Digambar Bagool Petitioner

versus

Union of India and others Respondents

D.V.Gangal, adv. for petitioner.
Suresh Mukar, adv. for respondent no.1.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 21st October 2004

PC :

1. This petition is directed against order dated 18th August 1998 passed by the Central Administrative Tribunal dismissing Original Application No..840 of 1994 filed by petitioner. Petitioner was working in Railways as Commercial Clerk from 17th November 1941. During 1965-66 he was transferred to Itarsi. He could not go on transfer due to his personal problems. He, therefore, resigned and his resignation came to be accepted on 31st March 1966. Then he went on making representations continuously for reinstatement. Ultimately, the Railways granted his request by order dated 17th November 1971 by appointing the petitioner as a new entrant at

bottom seniority in the new scale of Rs.260-430. Petitioner joined service again as per this order on 1st January 1972. He attained superannuation and retired from service on 30th June 1980.

2. Petitioner's grievance before the Tribunal was that, he was not given benefit of previous service for the purposes of qualifying service for getting pension. Under Rule 428 of the Railway Pension Manual, there is a provision to condone the break in service, if it does not exceed 12 months. The petitioner's first spell of service was not pensionable as it was covered by Provident Fund Scheme but the second spell of the service was in regular service. In the second spell of service, petitioner had put in only eight and a half years of service, and he is not entitled to pension. It was contended by the petitioner before the Tribunal that the provisions of Rules 426 and 427 of the Railway Pension Manual and Rules 1307 and 1308 of the Indian Railway Establishment Manual which put restrictions on the power of granting condonation of break in service are ultra vires the Constitution of India and pension cannot be denied by such restrictions which are contrary to law and contrary to Articles 14 and 16 of the Constitution of India. Petitioner prayed that

the period of break from 17th March 1966 to 1st January 1972 should be condoned by treating it as DIES-NON, for a declaration that Rules 426 and 427 of the Railway Pension Manual and Rules 1307 and 1308 of the Indian Railway Establishment Manual are null and void being violative of Articles 14 and 16 of the Constitution of India and for a declaration that the petitioner is entitled to pensionary benefits. The Tribunal after considering submissions of both sides held that the relevant Railway Rules are not violative of Articles 14 and 16 of Constitution of India and are legal and valid, and the petitioner is not entitled to the benefit of past service from 17th March 1966 to 1st January 1972 as qualifying service for getting the pension.

3. Mr.Gangal, learned counsel appearing for petitioner has not pressed the challenge to the validity of Rules 426 and 427 of the Railway Pension Manual and Rules 1307 and 1308 of the Indian Railways Establishment Manual. Learned counsel, however, submitted that the right to pension is an old age security benefit guaranteed being directive policy of the State and hence covered by Part IV of the Constitution of India and this Court should grant condonation of break in service by declaring the condition of maximum

one year's break in service as directory. Learned counsel heavily relied upon an unreported decision of Supreme Court dated 4th January 1999 in Civil Appeal No.3497 of 1991 (R.T.Lynch Vs. Union of India and another). On the other hand Mr.Suresh Kumar submitted that the rules do not permit condonation of break in service which is in excess of one year. Therefore, petitioner is not entitled to continuity in service. In any event, learned counsel pointed out that the petitioner has forfeited his first spell of service, inasmuch as, under Rule 426 of the Indian Pension Manual resignation entails forfeiture of past qualifying service.

4. Rule 427 of the Railway Pension Manual provides for condonation of delay in service. Rule 428 provides that the conditions for condonation of break in service under Rule 427 applies to resignation etc.. Therefore, by a conjoin reading of Rule 427 and Rule 428 it can not be disputed that even in case of resignation break in service can be condoned by the competent authority subject to clauses 1 to 3 of Rule 427. Rule 427(3) provides condonation of break in service subject to three conditions. We are concerned with third condition which reads as under :-

> "(c) The break should not be of more than one year duration. In cases where there are two or more breaks, the total of the periods of all breaks that are condoned should not exceed one year."

5. In the present case petitioner's first spell of service came to an end by resignation on 31st March 1966 when the petitioner left the job after resignation. The second spell of service commenced from 1st January 1972. Therefore, the period of break between the two spells of service is about five years and odd from March 1966 to January 1972. We have already noticed that the relevant clause in Rule 427 provides that the period of break between two spells of service should not exceed one year. If the respondents have declined to grant pensionary benefits by applying the rule, it is not open for this Court to condone the break contrary to the statutory mandate. In our view, it is not possible for the Court to condone the break in violation of express provisions contained in Rule 427. It is also necessary to state that the judgement relied upon by Mr.Gangal, learned counsel for petitioner of Supreme Court in R.T.Lynch Vs/ Union of India and another, cannot be treated as a precedent. That was a case where the petitioner before the Court had been removed from service after

Disciplinary Inquiry. Since there was break in service, it affected the right of petitioner to pension. The Supreme Court in the above decision has observed as follows :-

> "the Appellant was admittedly removed from service after a disciplinary enquiry and was taken back in service as a fresh entrant in 1968. He superannuated in 1987. The break in service affects his pension. Whatever may be reasons for his reemployment, the employer/ respondent obviously condoned the lapses to call him back to duty and it is a usual relief available in these circumstances to give continuity of service for purpose of pension."

6. It is true that the Supreme Court granted the appellant's request to condone the break in service and continuity in service for getting pension. It is short order of Supreme Court. The Supreme Court has not considered the provisions of Railway Pension Manual or any other Railway Service Rules. Supreme Court has not laid down any proposition in law that even if there is break in service for more than one year the administration has to condone the same under Rule 427. The Supreme Court has not interpreted any service rules or law in that case. It is clear to us that it was in the facts and circumstances of that case that the Supreme Court has granted pension to the appellant. We have to

bear in mind that under Article 142 of the Constitution of India, the Supreme Court has unlimited and very wide power to pass any order for doing complete justice in any case. If the Supreme Court in it’s wisdom and discretion gives relief to parties under it’s plenary powers, the High Court cannot give similar reliefs to the parties under Article 226 of Constitution of India.

7. In our view, the issue is covered by the observations of Supreme Court itself in the case of State of Punjab Vs. Surindar Kumar reported in 1992(1)-SLR-337. In that case, the High Court relying upon an order of the Supreme Court had allowed the writ petition filed by the party with a direction to the Government that the parties appointed on part time should be continued until regular appointments are made. The Supreme Court noticed that the order of High Court was not sustainable and reasonable. The Supreme Court observed in para 6 of the judgement at page 337 which reads as follows :-

> "6. A decision is available as a precedent only if it decides a question of law. The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary

> employee to be regularised in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgment of this Court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a court whose judgment is not subject to further appeal and other courts. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order of judgment, but the requirement is not imperative in the case of this Court. It is, therefore, futile to suggest that if this Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the Judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge."

8. In the light of decision of Supreme Court, it is not possible to treat the judgement of Supreme Court relied upon by petitioner’s advocate as a

binding precedent. No other point was argued before us. Consequently, we dismiss the writ petition with no order as to costs.'

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)